

Bob BRISCOE, *et al.*
Serial No. 10/593,423
March 15, 2012

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

Entry of the above-requested corrective amendments to claims 24, 26 and 28 is respectfully requested. It is believed that entry of these amendments is appropriate under either the provisions of 37 C.F.R. §1.116 (after final amendment) or in response to the Examiner's favorable consideration of the applicants' concurrent request to withdraw the "final" designation of the last office action.

The amendments made by the applicants in the last response filed November 16, 2011, were limited solely to minor formality-based amendments in response to the formality-based claim objections set forth in the prior office action dated August 18, 2011. For example, the Examiner objected to use of the term "units" in claim 1, and claim 1 was therefore amended to avoid use of the term "units". Furthermore, the Examiner expressly suggested that claim 1 be amended to recite "the initial condition assigned in respect of data provided by said provider node". The Examiner has asserted that the last submitted amendments change the claim scope. However, the Examiner has not explained how the scope of the claims has possibly been changed – nor how the applicants' amendments differ from the exact amendments proposed by the Examiner in the prior office action and now apparently found objectionable by the Examiner (e.g., "in respect of a previous data provided by said provider node").

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In spite of the fact that applicants' prior amendments merely were directed to alleged formality-based issues and even adopted exact language from the Examiner's suggestions and, therefore, did not raise any "new issues", the Examiner has now withdrawn all earlier grounds of rejection and asserted new grounds of rejection in the last office action, which has been designated "final". Under regular USPTO procedure, this is believed to be a premature designation of "finality", and withdrawal of same (and, therefore, entry of the above amendments) is respectfully requested.

Alternatively, for reasons to be explained below, the above-requested amendments are merely corrective of formality-based issue so as to address recently noted erroneous (unintended) recitations at these amended claims. Accordingly, under the provisions of Rule 116, it is believed that these requested amendments present the claims in better form for consideration on appeal and, since the inadvertent erroneous prior amendments have only recently been noted, this should also supply good and sufficient reasons why the amendments are necessary and were not earlier presented.

The Examiner's comments concerning claims 24 and 26 in the last office action have led to a more careful review of the language in these claims – and a realization that the language found in the claims is not exactly as previously intended by applicants. The above amendments are thus corrective in nature and are not believed to present any new issue *vis-à-vis* the cited prior art and arguments for patentability, etc.

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Applicants erroneously included some additional wording in the second “assigning” step of claim 26, corresponding to that which was (correctly) included in the second “assigning” step of claim 24. The wording in claim 24 relates to a different “initial condition” being assigned to the path characterization metric in respect of “subsequent data”. The term “discrepancy information” is used in claim 24 because the respective initial conditions of the path characterization metric in respect of the “previous” and the “subsequent” data differ by a difference that depends on the “discrepancy information”.

Claim 26 does not do this, as it was framed in order to cover a possible “work-around” to claim 24. It uses the term “discrepancy information”, but in a different way. Instead of using it to allow a different “initial condition” to be assigned to the path characterization metric in respect of the “subsequent data”, it makes information indicative of the “discrepancy information” available to an intermediate node that receives the “subsequent data”. This allows the intermediate node to make a (belated) adjustment to the metric in respect of the “subsequent data” which is equivalent to that which would be made (by the provider node) in relation to the “initial condition” of the metric in respect of the “subsequent data” in claim 24.

Further changes are now proposed in response to an issue raised by the Examiner *vis-à-vis* claims 24 and 26 on page 3 of the last office action. A similar issue could have been raised in relation to claim 28, so corresponding amendments are made to claim 28 as well. These changes have been made in order to clarify that, irrespective of whether one is

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dealing with previously-provided or subsequent data, the claim is always referring to the same path characterization metric.

An important issue in common to all claims is that “discrepancy information” (as defined in the respective independent claims) is established in relation to the path characterization metric in respect of (previously-provided) data, and is used in relation to the path characterization metric in respect of subsequent data.

The rejection of claims 1, 3-6, 9-16, 20-23 and 28-29 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen ‘332 in view of Kalyanasundaram ‘311 (“Kal”) is respectfully traversed. The rejection of claims 2 and 7-8 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen/Kal in further view of Cain ‘469 is also respectfully traversed – as is the rejection of claims 17-19 under 35 U.S.C. §103 based on Honeisen/Kal in view of Tanaka ‘538 and the rejection of claims 24-27 under 35 U.S.C. §103 as allegedly being made “obvious” based on Honeisen in view of Karagiannis ‘395.

Fundamental reasons for distinction from the primary Honeisen reference have already been noted before and will be enlarged upon below. Earlier argumentation with respect to Honeisen is hereby respectively incorporated by reference so as to not unduly burden the present response. None of the secondary or tertiary references is believed to teach or suggest the fundamental deficiencies of Honeisen – and indeed the Examiner does not suggest that they do.

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The Examiner is thanked for providing a “response to arguments” section at pages 2-4 of the last office action. The Examiner’s comments are quite helpful in better understanding the Examiner’s viewpoint and will hopefully lead to a better explanation of the applicants’ viewpoint. Upon reconsideration in view of the following further response (which is largely directed towards the Examiner’s “response to arguments” comments), it is hoped that this entire application will be found allowable.

Should the Examiner continue to believe this application is not yet in condition for allowance, it is respectfully requested that the undersigned be telephoned for an interview.

From the “response to arguments” section, it appears that the Examiner is concerned that applicants have failed to follow the Examiner’s earlier suggested way of overcoming claim objections. Apart from suggesting some minor linguistic changes, most of which would have, in applicants’ view, led to improper English grammar, applicants are unaware of the specific suggested changes to which the Examiner is referring. Still further, the linguistic changes suggested do not appear to be relevant to the prior art-based issues at hand.

The Examiner clarifies in the “claim rejections” section that he is regarding “*all bit rates supported*” as Honeisen’s “*target condition*”. The Examiner is, therefore, regarding Honeisen’s value “11111111” as corresponding to both the “initial condition” and the “target condition” in the pending claims. As will be demonstrated, this is an inconsistent assertion.

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The Examiner also asserts that the feedback information Honeisen's "receiver" makes available for its provider is actually "*...discrepancy information indicative of a measure of any discrepancy between the condition of the path characterization metric in respect of data received by it and a predetermined target condition for the path characterization metric...*". This is incorrect. Irrespective of what is regarded as the "target condition" in Honeisen, and what value it has for any particular case, the feedback that results is merely a value indicating the bit-rates that the path supports. If the feedback information in Honeisen were actually "**a measure of any discrepancy**" between the condition of the path characterization metric and the predetermined target condition, then a different "target condition" would clearly have a different "discrepancy" from it. With Honeisen, this is not the case – the sender simply sends back a value indicating the bit-rates that the path supports.

This is exactly the point made by applicants' prior remarks. As pointed out, if the sender (in one case) sends '11111111' and the path supports '01001011', the feedback is merely a value indicating the bit-rates that the path supports, not the discrepancy between what the path supports and '11111111'. This is proved further by considering the case where the sender subsequently sends '01001011'. The feedback is still '01001011'. If the feedback were indicative of a measure of any discrepancy, it would change between the sender correctly and incorrectly predicting the path characteristic. In Honeisen, the feedback is not affected by a change in the "target condition", so it cannot be indicative of a

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measure of any discrepancy between the condition of the path characterization metric and the target condition.

In view of the above, applicants' prior arguments are still believed to be correct. The Examiner asserts that in generating a new message with an SDP body that indicates which codec is to be used for the session, entity "UE1" in Honeisen would be assigning a different initial condition to the path characterization metric in respect of subsequent data provided by it that differs from the initial condition assigned in respect of data it has previously provided by a difference dependent on "discrepancy information". It is not. Entity "UE2" in Honeisen (which the Examiner is regarding as the receiver) does not make available to "UE1" (or to any other entity) any "discrepancy information" as defined in the penultimate sub-paragraph of claim 1 and, therefore, does not make any such information available to "UE1" (or to any other entity). Instead, UE1 receives information from "UE2" which allows it to assign a condition to a different metric in respect of a path, rather than assigning a different initial condition to the same metric in respect of subsequent data.

The Examiner appears to indicate that the applicants' explanation provided in relation to claim 1 does not apply to claims 24 and 26. This is incorrect. Points at which this assertion breaks down in relation to claims 24 and 26 are at the respectively corresponding points in these claims. For example, see the Examiner's comments in relation to the respective steps of establishing whether a "discrepancy" exists, and the use of information relating to any such discrepancy in respect of subsequent data. As explained in detail in relation to

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claim 1, Honeisen does not teach that “UE2” or any other entity establishes information relating a discrepancy (as defined in the “establishing” steps of both of these claims), let alone that an initial condition is then assigned to the path characterization metric (in respect of subsequent data) in dependence thereon (as is done in claim 24), or that information relating to the discrepancy is made available to the intermediate node (as is done in claim 26).

The Examiner now relies upon newly cited “Kal” for the final step of claim 1. However, as previously explained, claim 1 is distinguished from Honeisen by more than just this final step, and there is also no suggestion in “Kal” that it has a receiver node that determines, and makes available for a provider node, “...discrepancy information indicative of a measure of any discrepancy between the condition of the path characterization metric in respect of data received by it and a predetermined target condition for the path characterization metric...” – nor that it has a provider node that then assigns a different initial condition to the path characterization metric in respect of subsequent data provided by it that differs from the initial condition assigned in respect of data it has previously provided by a difference dependent on any such discrepancy information.

Accordingly, this entire application is now believed to be in allowable condition, and a formal notice to that effect is earnestly solicited.

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The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or that should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:

A handwritten signature in cursive script, appearing to read "Larry S. Nixon", written over a horizontal line.

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